

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of)
)
Petitions for Reconsideration)
of Note and Security Agreement)
for C Block PCS Licensees)

ORDER

Adopted: June 2, 1997

Released: June 2, 1997

By the Acting Chief, Wireless Telecommunications Bureau:

1. The Wireless Telecommunications Bureau ("Bureau") has before it three Petitions for Reconsideration filed by a number of C block Personal Communications Services (PCS) licensees. The licensees challenge various aspects of the Bureau's action requiring broadband PCS C block license applicants to execute an "Installment Payment Plan Note and Security Agreement" ("*Note and Security Agreement*") as a condition to the final grant of their PCS licenses. By this Order, we hereby dismiss all three Petitions as untimely.

2. *Background.* On September 17, 1996, the Bureau released a Public Notice announcing the award of several broadband PCS C block licenses.¹ For those license applicants who elected to pay for their licenses using the Commission's installment payment plan, the grant of each license was conditioned on the timely execution and return by each license applicant of a *Note and Security Agreement* which was sent to each license applicant by the United States Department of Treasury.²

¹ FCC Announces Grant of Broadband Personal Communications Services Entrepreneurs' Block BTA Licenses, DA 96-1553, *Public Notice* (rel. September 17, 1996) ("*September 17th Public Notice*").

² *Id.*

3. *The Petitions.* On December 16, 1996, Alpine PCS, Eldorado Communications, L.L.C., KMTel, L.L.C., Mercury PCS, L.L.C., Miccom Associates, and PCSouth, Inc. collectively filed a petition for reconsideration challenging the Bureau's authority to require broadband PCS C Block license applicants to execute the *Note and Security Agreement* as a condition to the grant of their licenses.³ Also on December 16, 1996, Devon Mobile Communications, L.P., R & S PCS, Inc., Chase Telecommunications, Inc, MCG PCS, Inc., Comscape Holding, Inc., Central Alabama Partnership L.P. 132, Integrated Communications Group Corporation, Mobile Tristates L.P. 130, Quantum Communications Group, Inc., Alpine PCS, Eldorado Communications L.L.C., KMTel, L.L.C., Mercury PCS, L.L.C., Miccom Associates, and PCSouth, Inc. collectively filed a petition for reconsideration challenging various terms of the *Note and Security Agreement*.⁴ Finally, on January 16, 1997, Savannah Independent PCS Corporation filed a petition for reconsideration challenging the specific interest rate applicable under the *Note and Security Agreement* for broadband PCS licenses conditionally granted on September 17, 1996.⁵

4. *Discussion.* Section 405(a) of the Communications Act of 1934, as amended, provides that "[a] petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report or action complained of."⁶ Section 1.4(b) of the Commission's Rules defines the date on which public notice of Commission action is given as the date on which the Public Notice announcing such action is released.⁷ Because the time for filing petitions for reconsideration is prescribed by statute, the Commission may not ordinarily waive or extend this filing period in the absence of extremely unusual circumstances.⁸

5. The Bureau's *September 17th Public Notice* constitutes the "action complained of"

³ Alpine PCS, Eldorado Communications, L.L.C., KMTel, L.L.C., Mercury PCS, L.L.C., Miccom Associates, and PCSouth, Inc., *Petition for Reconsideration* (December 16, 1996).

⁴ Devon Mobile Communications, L.P. and R & S PCS, Inc., Chase Telecommunications, Inc, MCG PCS, Inc., Comscape Holding, Inc., Central Alabama Partnership L.P. 132, Integrated Communications Group Corporation, Mobile Tristates L.P., Quantum Communications Group, Inc., Alpine PCS, Eldorado Communications L.L.C., Miccom Associates, and PCSouth, Inc., *Petition for Reconsideration* (December 16, 1996).

⁵ Savannah Independent PCS Corp., *Petition for Reconsideration* (January 16, 1997).

⁶ 47 U.S.C. § 405(a).

⁷ 47 C.F.R. § 1.4(b).

⁸ See, e.g., *Reuters Ltd. v. FCC*, 781 F.2d 946, 952 (D.C. Cir. 1986) (concluding that the Commission acted beyond its lawful authority in entertaining a belated petition for reconsideration). See also *Metromedia, Inc.*, 56 FCC 2d 909 (1975) (Commission may not waive 30-day filing period to accept a petition to deny filed one day late); *Virginia Islands Telephone Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993).

in each of the reconsideration petitions before us.⁹ Because none of the petitioners have provided any justification as to the lateness of the petitions, the petitions will be dismissed.

6. Savannah seeks reconsideration of a December 17, 1996, letter ("*December 17th Letter*") in which the Commission's General Counsel and the Bureau responded to concerns raised by legal counsel for certain broadband PCS C block license applicants regarding the *Note and Security Agreement*.¹⁰ The *December 17th Letter* is only a reiteration of the statements in the *September 17th Public Notice*, that C Block license applicants who choose to pay for their licenses in installments would be required to execute the *Note and Security Agreement* bearing the rate of interest as determined by the Commission's Rules.¹¹ Consequently, as is the case with the other two petitions before us, the "action complained of" in Savannah's petition occurred on September 17, 1996.

7. Because we find dispositive the failure of petitioners to submit their reconsideration petitions in a timely manner consistent with the Commission's Rules, we find it unnecessary to address petitioners' substantive arguments.¹² In any event, we note that the Commission amended § 1.2110(e)(3) of its rules to codify the procedure under which all applicants eligible to utilize installment payments execute a promissory note and security agreement as a condition of participating in any installment payment plan offered by the Commission.¹³ No petitions for reconsideration of this rule change have been filed.

8. Accordingly, IT IS ORDERED that the December 16, 1996, petition for reconsideration filed by Alpine PCS, Eldorado Communications, L.L.C., KMtcl, L.L.C., Mercury PCS, L.L.C., Miccom Associates, and PCSouth, Inc. IS DISMISSED as untimely pursuant to 47 U.S.C. § 405(a).

9. IT IS FURTHER ORDERED that the December 16, 1996, petition for reconsideration filed by Devon Mobile Communications, L.P., R & S PCS, Inc., Chase

⁹ See 47 U.S.C. § 405(a).

¹⁰ See *Letter to Leonard J. Kennedy and Richard S. Denning from William E. Kennard, General Counsel, and Michele C. Farquhar, Chief, Wireless Telecommunications Bureau, Federal Communications Commission*, DA 96-2123 (rel. December 17, 1996).

¹¹ See 47 C.F.R. § 24.711(b)(3).

¹² The Bureau notes that it is soliciting comment on several requests for waiver of Section 24.711(b)(3) of the Commission's Rules determining the interest rate to be paid under Commission installment payments filed by C Block licensees whose licenses were granted on September 17, 1996. See *Comment Requested on 7 Percent Interest Rate Imposed on C Block Installment Payment Plan Notes, Public Notice*, DA 97-1152 (rel. June 2, 1997).

¹³ See *Amendment of Part 1 of the Commission's Rules - Competitive Bidding Proceeding, Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 97-82, FCC 97-60 at ¶ 10 (rel. Feb. 28, 1997).

Telecommunications, Inc, MCG PCS, Inc., Comscape Holding, Inc., Central Alabama Partnership L.P. 132, Integrated Communications Group Corporation, Mobile Tristates L.P. 130, Quantum Communications Group, Inc., Alpine PCS, Eldorado Communications L.L.C., KMTel, L.L.C., Mercury PCS, L.L.C., Miccom Associates, and PCSouth, Inc. IS DISMISSED as untimely pursuant to 47 U.S.C. § 405(a).

10. IT IS FURTHER ORDERED that the January 16, 1997, petition for reconsideration filed by Savannah Independent PCS Corporation IS DISMISSED as untimely pursuant to 47 U.S.C. § 405(a).

11. This action is taken pursuant to delegated authority under Section 0.331 of the Commission's Rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

Daniel B. Phythyon
Acting Chief, Wireless Telecommunications Bureau

¹⁴ 47 C.F.R. § 0.331.